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U.S. Department of Justice

Environment and Natural Resources Division

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90-12-062

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EX PARTE OR LATE FILED  
January 19, 2000

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JAN 19 2000

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Federal Communications Commission  
Secretary Magalie Roman Salas  
445 12th St. S.W.  
Washington DC 20554

Re: In the Matter of the Cheyenne River Sioux Tribe Telephone Authority's and US  
West Communications, Inc.'s Joint Petition for Expedited Ruling Preempting  
South Dakota Law

Dear Secretary Salas:

Enclosed are two copies of Ex Parte Comments of the United States Department of  
Justice and the United States Department of the Interior concerning the Cheyenne River Sioux  
Tribe Telephone Authority's and US West Communications, Inc.'s Joint Petition for Expedited  
Ruling Preempting South Dakota Law. A copy of this filing, as well as this letter, has been  
served in accordance with the attached certificate of service.

Thank you for your assistance.

Sincerely,

Lawrence S. Roberts  
Trial Attorney

No. of Copies rec'd  
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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

IN THE MATTER OF

THE CHEYENNE RIVER SIOUX )  
TRIBE TELEPHONE AUTHORITY'S )  
AND US WEST COMMUNICATIONS, )  
INC.'S JOINT PETITION FOR )  
EXPEDITED RULING PREEMPTING )  
SOUTH DAKOTA LAW )

CC DOCKET NO. 98-6

**RECEIVED**  
**JAN 19 2000**  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

EX PARTE COMMENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE  
AND THE UNITED STATES DEPARTMENT OF THE INTERIOR

The Department of Justice and the Department of the Interior submit these comments concerning the Cheyenne River Sioux Tribe Telephone Authority's ("CRSTTA") and US West Communications, Inc.'s Joint Petition for Expedited Ruling Preempting South Dakota Law ("Joint Petition"). These comments are submitted pursuant to 47 C.F.R. § 1.1206.

I. INTRODUCTION

Sovereign immunity is a fundamental aspect of tribal governments that is protected from state diminution pursuant to federal law. South Dakota has interpreted and applied S.D. Codified Law § 49-31-59 in such a manner that it requires a tribe to either waive its sovereign immunity or be prohibited from acquiring a telephone exchange in South Dakota. The cost exacted by the application of the state statute is an unacceptably high price in that it runs afoul of federal law protections of tribal sovereign immunity. The practical effect is that § 49-31-59 prohibits tribes from acquiring a telephone exchange in South Dakota. Thus, §49-31-59 creates a barrier to entry in the telecommunications market for the CRSTTA and any other federally recognized tribe in violation of 47 U.S.C. § 253. Accordingly, the Federal Communications

Commission should preempt this state law.

## II. FACTUAL BACKGROUND

On December 20, 1994, US West and the proposed purchasers of the 67 telecommunication exchanges requested the South Dakota Public Utilities Commission (“SDPUC”) to declare “that the sale and transfer did not require SDPUC approval or, alternatively, that the SDPUC knew of no reason why the sale and transfer should not occur.” Joint Petition at A-2. On March 30, 1995, South Dakota enacted the law which is the subject of the Joint Petition.<sup>1</sup>

After reviewing the proposed sales under § 49-31-59, the SDPUC approved the sale and transfer of all the exchanges except for three exchanges to be purchased by the CRSTTA and one exchange to be purchased by the Beresford Municipal Telephone Company.<sup>2</sup> Despite finding that the CRSTTA “currently provides adequate service to its present customers” and

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<sup>1</sup>Section 49-31-59 requires the SDPUC to consider:

[T]he protection of the public interest, the adequacy of local telephone service, the reasonableness of the rates for local service, the provision of 911, Enhanced 911, and other public safety services, the payment of taxes, and the ability of the local exchange company to provide modern, state-of-the-art telecommunications services that will help promote economic development, tele-medicine, and distance learning in rural South Dakota.

S.D. Codified Law § 49-31-59.

<sup>2</sup>The Beresford sale was denied on the basis that a state law, different than the one challenged in this proceeding, prohibited a municipal telephone company from owning and operating an exchange that is outside municipality boundaries. See Joint Reply of the Cheyenne River Sioux Tribe Telephone Authority and US West Communications, Inc. to the Comments of the South Dakota Public Utilities Commission Opposing the Joint Petition for Preemption at 10.

“has the ability to provide [modern, state-of-the-art telecommunications] services,” the SDPUC concluded that the sales were not in the public interest and denied the applications.<sup>3</sup> Joint Petition Attachments 2, 3, and 4 at 9. Rather than explicitly refer to the CRSTTA’s refusal to waive its sovereign immunity, as the SDPUC had done in its earlier decisions that were reversed by the state court, the SDPUC pulled a slight of hand and denied the sales on the basis that it believed that “there is no enforcement mechanism that would require CRSTTA to pay gross receipts taxes” and that it was “unable to require, as a condition of the sale” that the CRSTTA 1) “offer all existing services currently offered by US West”; 2) “not increase current local rates for 18 months”; and 3) “not change any current extended area service arrangements without prior approval by the Commission.” Joint Petition Attachments 2, 3, and 4 at 7, 8. Although couched in terms of “no enforcement mechanism” and “unable to require, as a condition of the sale”, South Dakota’s underlying, unspoken basis for its denial was the Tribe’s refusal to waive its sovereign immunity.<sup>4</sup>

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<sup>3</sup>In evaluating whether the sale was in the public’s interest, the SDPUC refused to consider the CRSTTA’s dispute resolution mechanism which provides customers with a forum to seek redress of any service complaints. See Department of Justice Attachment 1; Joint Petition at A-9; Attachment 7 at 123-24, 129-30, 133-34. As set forth below, any aggrieved customers presumably would have a right to bring suit in federal court to challenge the jurisdiction of the Cheyenne River Sioux Tribe after exhaustion of tribal remedies. National Farmers Union Insurance Companies v. Crow Tribe of Indians, 471 U.S. 845 (1985).

<sup>4</sup> The South Dakota Supreme Court affirmed the SDPUC’s interpretation and application of the law.

### III. ARGUMENT

- A. Tribal Sovereignty is a federally protected right and is not subject to diminution by States.

“[I]ndian tribes still possess those aspects of sovereignty not withdrawn by treaty or statute, or by implication as a necessary result of their dependent status.” United States v. Wheeler, 435 U.S. 313, 323 (1978). “The common law sovereign immunity possessed by [tribes] is a necessary corollary to Indian sovereignty and self-governance.” Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, 476 U.S. 877, 890 (1986). “As a matter of federal law, an Indian tribe is subject to suit only where Congress has authorized the suit or the tribe has waived its immunity.” Kiowa Tribe of Oklahoma v. Manufacturing Technologies Inc., 118 S.Ct. 1700, 1702 (1998). “[I]n the absence of federal authorization, tribal immunity, like all aspects of tribal sovereignty, is privileged from diminution by the States.” Three Affiliated Tribes, 476 U.S. at 891; see also Kiowa, 118 S.Ct. at 1703. A state statute which prohibits a tribe from access to state court absent a waiver of its sovereign immunity is preempted by federal law. Three Affiliated Tribes, 476 U.S. at 883.

With regard to off-reservation activities, Indian tribes are generally subject to non-discriminatory state laws. “Absent express federal law to the contrary, Indians going beyond reservation boundaries have generally been held subject to non-discriminatory state law otherwise applicable to all citizens of the State.” Mescalero Apache Tribe v. Jones, 411 U.S. 145, 148-49 (1973) (emphasis added). “To say substantive state laws apply to off-reservation conduct, however, is not to say that a tribe no longer enjoys immunity from suit. . . . [t]here is a difference between the right to demand compliance with state laws and the means available to

enforce them.” Kiowa, 118 S.Ct. at 1703. Accordingly, in general, a state may apply non-discriminatory state laws to off-reservation tribal activities. Absent a waiver of tribal sovereign immunity, however, the state may not enforce those laws against the tribe in federal, tribal, or state court. See Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma, 498 U.S. 505, 514 (1991). This is not to say that a state is otherwise without remedies. A state could enter into an agreement with a tribe concerning regulatory and taxation issues. Id. at 514. Further, a state may be able to bring an action against tribal agents or officers for prospective relief and damages. Id. Thus, although sovereign immunity prevents a state from pursuing perhaps the most efficient remedy of a court action against a tribe, it does not leave a state without any enforcement mechanisms or remedies with regard to its legally entitled rights.

- B. Section 49-31-59 creates a barrier to entry into the telecommunications market in that it prohibits the CRSTTA and any other federally recognized tribe from acquiring a telephone exchange in South Dakota.

In 1996, Congress authorized the FCC to preempt any state law that "prohibit[s] or [has] the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." 47 U.S.C. § 253(a).<sup>5</sup> Congress defined “telecommunications service” as “the offering of telecommunications for a fee directly to the public . . . regardless of the facilities used.” 47 U.S.C. § 153(46). Section 253(a) and 47 U.S.C. § 153(46), “read

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<sup>5</sup>The legislative history explains the importance of this Section to the entire Act. “States have granted . . . certain exclusive franchises, not allowing competition . . . and if we are having deregulation here, removal of barriers to entry, we have to take this step.” 141 Cong. Rec. S8175 (daily ed. June 12, 1995.) “[S]ection [253] goes to the very heart of this bill because removal of barriers to entry is what we are trying to accomplish.” Id.

together, provide that no state or local requirement may prohibit or have the effect of prohibiting any entity from providing any offering of telecommunications directly to the public for a fee regardless of the facilities used.” In the Matter of the Public Utility Commission of Texas, 13 F.C.C.R. 3460, ¶ 74 (FCC 1997) (emphasis added). Accordingly, the FCC must first determine whether the challenged law “may prohibit or have the effect of prohibiting the ability of any entity to provide any telecommunications service.” In the Matter of the Petition of the State of Minnesota, 1999 WL 1244016, ¶11 (FCC 1999).

The South Dakota statute challenged by US West and the CRSTTA has the effect of prohibiting an Indian tribe from providing telecommunication services through the acquisition of a telephone exchange. South Dakota’s application of the challenged statute has resulted in the approval of all the US West sales except those to the CRSTTA.<sup>6</sup> This fact alone is prima facie evidence that the statute has the effect of prohibiting tribes from providing telecommunications services through the purchase of a telephone exchange.

Further, the undeniable conclusion is that the underlying basis for denying the sales to the CRSTTA, pursuant to § 49-31-59, was its sovereign immunity. As explained above, the CRSTTA’s sovereign immunity is a federally protected right not subject to diminution by South Dakota. Instead of explaining that it was denying the sales due to the CRSTTA’s sovereign status, the SDPUC blankly stated that it had “no enforcement mechanism” to collect taxes from

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<sup>6</sup>See n.1, supra.

the CRSTTA and that it was “unable to require” certain conditions of sale.<sup>7</sup> The CRSTTA’s sovereign immunity is the only explanation as to why the SDPUC allegedly had “no enforcement mechanism” or was “unable to require” certain conditions of sale.<sup>8</sup> Although the SDPUC did not explicitly condition approval of the sales upon a waiver of the CRSTTA’s sovereign immunity, it most certainly interpreted and applied the statute to require denial absent a waiver of tribal sovereign immunity. The South Dakota Supreme Court affirmed the SDPUC’s application of the statute. Thus, the effect of South Dakota’s statute is that it creates a barrier to entry into the telecommunications market for any Indian tribe seeking to purchase a telephone exchange within South Dakota. Cf. Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Engineering, 476 U.S. 877 (1986) (federal law preempts state statute which conditions tribal access to state court only upon waiver of tribal sovereign immunity).

- C. Section 49-31-59 is not competitively neutral and is not necessary to safeguard the rights of subscribers who are not tribal members.

Having established that the statute has the effect of prohibiting the CRSTTA and any other federally recognized Indian tribe from providing telecommunications service through the purchase of a telephone exchange, the Commission must next consider whether the statute falls

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<sup>7</sup>As earlier stated, the CRSTTA’s sovereign immunity may preclude the SDPUC from pursuing the remedy of a legal action against the CRSTTA, but that is not to say that the SDPUC is without remedies to collect any taxes to which it is lawfully entitled or ensure continued services. See Oklahoma Tax Commission, 498 U.S. at 514 (“There is no doubt that sovereign immunity bars the State from pursuing the most efficient remedy, but we are not persuaded that it lacks any adequate alternatives.”).

<sup>8</sup>Interestingly, without reference to the CRSTTA’s longstanding sovereign immunity, the SDPUC found that the CRSTTA currently provides adequate service to its present customers and has the ability to provide state-of-the-art telecommunications services. See Joint Petition Attachments 2, 3, 4 at 9.



within the exceptions set forth in sections 253(b) and (c).<sup>9</sup> States may enact laws to prohibit entry only if they do so

on a competitively neutral basis, . . . [and the law is] necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.

47 U.S.C. § 253(b); or

to manage the public rights-of-way or to require fair and reasonable compensation from telecommunications providers, on a competitively neutral and nondiscriminatory basis, for use of public rights-of-way on a nondiscriminatory basis, if the compensation required is publicly disclosed by such government.

47 U.S.C. § 253(c). The competitively neutral requirement of § 253(b) is “with respect to, and as between, all of the participants and potential participants in the market at issue.” In the Matter of Silver Star Telephone Company, Inc., 13 FCC Rcd. 16356, ¶ 11 (1998) (emphasis added). “At the very least, ‘competitive neutrality’ for purposes of 253(b) does not countenance absolute exclusion . . . .” In the Matter of AVR, L.P. D/B/A Hyperion of Tennessee, 1999 WL 335803, ¶ 17 (FCC 1999).

With respect to potential tribal purchasers of telephone exchanges, § 49-31-59 is hardly neutral. If two equally capable service providers seek to purchase a telephone exchange -- a tribal purchaser which possesses sovereign immunity and another purchaser which does not -- § 49-31-59 favors the applicant that does not possess sovereign immunity. In fact, as set forth above, § 49-31-59, as applied by the SDPUC and affirmed by the South Dakota Supreme Court, requires the denial of a tribal applicant absent a waiver of sovereign immunity.

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<sup>9</sup>South Dakota does not assert that the challenged statute falls within the exceptions provided by section 253(c). Therefore, these comments do not address whether the challenged statute falls within that section.

Accordingly, § 49-31-59 is not competitively neutral in that the statute absolutely excludes tribal entities which refuse to waive its sovereign immunity.

Nor is § 49-31-59 necessary to safeguard the rights of consumers. An absolute prohibition to entry into the telecommunications market will be preempted if less restrictive means are available to achieve the legitimate goal. In the Matter of Classic Telephone, Inc., 11 FCC Rcd. 13082 (FCC 1996). A “reasonable” state law or decision that creates a barrier to entry will be preempted if it is not “necessary” to achieve the protections set forth in § 253(b). In the Matter of New England Public Communications Council Petition for Preemption Pursuant to Section 253, 1996 WL 709132 (FCC 1996).

The SDPUC argues that the statute and disapproval of the sales to the CRSTTA is necessary to safeguard the rights of telephone subscribers who are not tribal members. See Comments of the South Dakota Public Utilities Commission at 17-18. The operating history of the CRSTTA, however, demonstrates that denial of the sales is not “necessary” to safeguard the rights of the public. The CRSTTA has served the Eagle Butte, Dupree, South Dupree, Isabel, and La Plant exchanges for the past 21 years with few complaints regarding service. See Joint Petition at 5. During the SDPUC hearings, the CRSTTA provided ample evidence to support the SDPUC’s finding that the CRSTTA provides adequate service to its customers and has the ability to provide modern state-of-the-art services. See Joint Petition Attachments 2, 3, 4, at 9

and Attachment 7 at 123-134.<sup>10</sup> Moreover, the CRSTTA has explained to the SDPUC that it intends to provide such quality service in the future and upgrade its services as necessary. See Attachment 7 at 124-127, 131-137. The inevitable conclusion is that complete exclusion of the CRSTTA from purchasing the exchanges is not necessary to safeguard the rights of consumers given that South Dakota has other adequate, alternative avenues available to safeguard the rights of consumers. The CRSTTA's operating history, its statements on the record before the SDPUC concerning its plans of providing quality services, and the fact that it will be subject to non-discriminatory state laws with regard to off-reservation activities, establish that § 49-31-59, as applied by the SDPUC and affirmed by the South Dakota Supreme Court, is not necessary to safeguard the rights of consumers. Accordingly, § 49-31-59 does not fall within the exception set forth in § 253(b).

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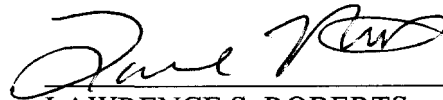
<sup>10</sup>In the event that customers have complaints, the CRSTTA has provided a dispute resolution mechanism by which customers may seek redress for their complaints. See Department of Justice Attachment 1; Joint Petition at A-9; Attachment 7 at 123-24, 129-30, 133-34. Moreover, any aggrieved nonmembers presumably will have a right to bring suit in federal court to challenge the jurisdiction of the Cheyenne River Sioux Tribe after exhaustion of tribal remedies. National Farmers Union Insurance Companies v. Crow Tribe of Indians, 471 U.S. 845 (1985). In other words, the CRSTTA's subscribers are not without remedies.

#### IV. CONCLUSION

For the reasons set forth above, the FCC should grant the CRSTTA's and US West's Petition for Preemption.

Dated this 19<sup>th</sup> day of January, 2000

Respectfully submitted,  
LOIS J. SCHIFFER  
Assistant Attorney General  
Environment and Natural Resources  
Division



LAWRENCE S. ROBERTS  
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Owl River Telephone, Inc.  
Board of Directors Resolution No. 97-05-28-07

#### **PROCEDURES FOR RESOLUTION OF DISPUTES**

The Cheyenne River Sioux Tribe Telephone Authority ("Telephone Authority") adopts this Resolution to establish procedures for resolution of disputes regarding the Telephone Authority's provision of telecommunications services to all subscribers of telephone exchanges owned and operated by the Telephone Authority.

##### **SEC. 1. AUTHORIZATION.**

(a) The Telephone Authority is chartered by Cheyenne River Sioux Tribal Ordinance No. 24, and is authorized under that tribal ordinance to own and operate telephone exchanges within and without the exterior boundaries of the Cheyenne River Indian Reservation

(b) The Telephone Authority is also authorized by Cheyenne River Sioux Tribal Ordinance No. 24 to sue and be sued in its corporate name upon any contract, claim or obligation arising out of its activities relating to the provision of telecommunications services.

(c) The Telephone Authority is also authorized by Cheyenne River Sioux Tribal Ordinance No. 24 to take such further actions as are commonly engaged in by corporate bodies of similar character as the Board of Directors of the Telephone Authority, and which the Board of Directors of the Telephone Authority deems necessary and appropriate.

##### **SEC. 2. PURPOSE.**

(a) Consistent with its authority under Cheyenne River Sioux Tribal Ordinance No. 24,

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**EXHIBIT 1**

Draft May 8, 1997

the Telephone Authority adopts these dispute resolution procedures in order to provide a forum in which all subscribers to telephone exchanges owned and operated by the Telephone Authority, whether within or without the exterior boundaries of the Cheyenne River Indian Reservation, may present their disputes and seek redress thereof.

(b) Consistent with its authority under Cheyenne River Sioux Tribal Ordinance No. 24, the Telephone Authority waives its immunity from suit in the Cheyenne River Sioux Tribal Court for the limited purpose of providing all subscribers to telephone exchanges owned and operated by the Telephone Authority with a means of redress for disputes regarding the provision of telecommunications services by the Telephone Authority. Such redress shall not include money damages apart from the reimbursement of funds previously paid to the Telephone Authority by an aggrieved subscriber.

(c) The procedures for hearing and resolving disputes set forth herein are intended to provide all subscribers to telephone exchanges owned and operated by the Telephone Authority with due process of law.

### SEC. 3. INDEPENDENT HEARING EXAMINER.

(a) The Telephone Authority shall hire an Independent Hearing Examiner to hear disputes brought by subscribers to telephone exchanges owned and operated by the Telephone Authority relative to the provision of telecommunications services by the Telephone Authority.

(1) The Independent Hearing Examiner shall not be a member of the Cheyenne River Sioux Tribe, but shall have experience in and be familiar with dispute resolution processes.

Draft May 8, 1997

(2) The Board of Directors of the Telephone Authority shall determine in its sole discretion whether to hire an Independent Hearing Examiner for a specific time period to hear various disputes, or to hire an Independent Hearing Examiner for each specific dispute. The Board of Directors of the Telephone Authority shall also determine in its sole discretion the manner and amount of compensation the Telephone Authority shall pay the Independent Hearing Examiner.

(b) The Independent Hearing Examiner shall first consider any dispute regarding the provision of telecommunications services by the Telephone Authority. Such first hearing shall be in the nature of an administrative proceeding.

(c) The subscriber or subscribers of a telephone exchange owned and operated by the Telephone Authority seeking resolution of a dispute regarding the provision of telecommunications services by the Telephone Authority may present evidence and testimony supporting his, her or their position in any dispute with the Telephone Authority, and may be represented by counsel before the Independent Hearing Examiner.

(d) The Telephone Authority may present evidence and testimony in its defense and may be represented by counsel before the Independent Hearing Examiner.

(e) After due consideration of the facts underlying a dispute, and the testimony and evidence presented by the parties to dispute, the Independent Hearing Examiner shall render a decision.

(1) All decisions rendered by the Independent Hearing Examiner shall be binding

Draft May 8, 1997

upon the subscriber or subscribers bringing the dispute and upon the Telephone Authority, unless the subscriber or subscribers of a telephone exchange owned and operated by the Telephone Authority, or the Telephone Authority seeks review of the decision of the Independent Hearing Examiner in the Cheyenne River Sioux Tribal Court pursuant to Section 4 of this Resolution.

(2) All decisions rendered by the Independent Hearing Examiner shall be in writing and shall be served by U.S. Mail upon all parties to disputes before the Independent Hearing Examiner, and upon the Telephone Authority. The Independent Hearing Examiner shall also post all written decisions for a reasonable time in a conspicuous place in the offices of the Telephone Authority for public inspection.

(e) All evidence and testimony presented to the Independent Hearing Examiner shall become part of the administrative record underlying the dispute.

**SEC. 4. JUDICIAL REVIEW OF INDEPENDENT HEARING EXAMINER DECISIONS.**

(a) If, after having exhausted administrative remedies as provided by Section 3 of this Resolution, the subscriber or subscribers of a telephone exchange owned and operated by the Telephone Authority, or the Telephone Authority is or are dissatisfied with the decision of the Independent Hearing Examiner, the subscriber or subscribers, or the Telephone Authority may bring an action for review of the Independent Hearing Examiner's decision in the Cheyenne River Sioux Tribal Court within 30 days of the issuance of the Independent Hearing Examiner's decision.

(1) The party seeking review of a decision of the Independent Hearing Examiner



Draft May 8, 1997

must file a petition for review of such decision with the Independent Hearing Examiner and the Cheyenne River Sioux Tribal Court, and must notify all parties to the dispute regarding which the Independent Hearing Examiner issued such decision of the petition for review by sending all parties a copy of the petition for review by U.S. Mail.

(2) Failure to seek review within 30 days of the issuance of the Independent Hearing Examiner's decision shall result in the finality of the decision.

(b) A party may seek review of a decision of the Independent Hearing Examiner where the party asserts that the decision was:

(1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) Contrary to the laws, regulations and ordinances of the Cheyenne River Sioux Tribe, and any applicable laws of the United States; or

(3) Unsupported by substantial evidence and/or testimony presented to the Independent Hearing Examiner.

(c) Upon receiving a petition for review of a decision of the Independent Hearing Examiner, the Independent Hearing Examiner shall forward the administrative record to the Cheyenne River Sioux Tribal Court.

(d) Any review by the Cheyenne River Sioux Tribal Court of a decision of the Independent Hearing Examiner shall be appellate in nature upon the standards set forth in subsection (4) of this section 4, shall defer to the Independent Hearing Examiner's factual

determinations, and shall not be de novo.

**SEC. 5. SUBSCRIBER ADVISORY COMMITTEE.**

(a) There is hereby established a **Subscriber Advisory Committee**.

(1) The Subscriber Advisory Committee shall be comprised of three subscribers, at least of whom shall not be members of the Cheyenne River Sioux Tribe, of each telephone exchange owned and operated by the Telephone Authority.

(2) The Board of Directors of the Telephone Authority shall appoint the Subscriber Advisory Committee members for a period of one year. At the end of one year, the Board of Directors may appoint three new Subscriber Advisory Committee members, or may elect to extend the current members' terms for an additional year, not to exceed three consecutive years of service.

(b) The Board of Directors of the Telephone Authority shall consult with the Subscriber Advisory Committee on all matters related to:

(1) Proposed increases in the rates charged by the Telephone Authority for the provision of telecommunications services; and

(2) Proposed reductions in the telecommunications services provided by the Telephone Authority.

(c) The Board of Directors of the Telephone Authority shall consult with the Subscriber Advisory Committee prior to taking any of the actions described subsection (b) of this section 5.

**Adopted: May 28, 1997**

**SEAL**

### Board of Directors-Secretary

**Board of Directors-President**

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**CERTIFICATE OF SERVICE**

I, Gail Robinson, certify that copies of the Ex Parte Comments of the United States Department of Justice and the United States Department of the Interior was sent by messenger or overnight mail this 19<sup>th</sup> day of January, 2000, to the following:

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GAIL ROBINSON  
Department of Justice